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APPLICATION NO.	FIL	ING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,355 06/23/20		5/23/2003	Anthony David Auffret	PC22039A	7465
28940	7590	06/02/2005	EXAMINER		
		ACEUTICALS, 1	HAMLIN, D	ERRICK G	
10777 SCIENCE CENTER DRIVE SAN DIEGO, CA 92121				ART UNIT	PAPER NUMBER
0.11.0.200	,			1751	

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. Applicant(s)		•		μ					
Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE of this communication appears on the cover sheet with the correspondence address − Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE of THIS COMMUNICATION. Estatusion of time may be available under the provisions of 3°C FR 1.13(ii). In no event, however, may a reply be timely filled If the priod for reply is period advise the less than thirty (00) days, a reply which the statutory minimum of thirty (10) days will be considered timely. If NO period for reply is period advise the less than thirty (10) days, a reply which the statutory minimum of thirty (10) days will be considered timely. If NO period for reply is period advise the less than thirty (10) days, a reply which the statutory minimum of thirty (10) days will be considered timely. If NO period for reply is period advise the less than thirty (10) days, a reply with the statutory minimum of thirty (10) days will be considered timely. If NO period for reply is period advised to the less than the period of the period of the statutory minimum of thirty (10) days will be considered timely. If NO period for reply is period advised to the less than thirty (10) days, and the period of the communication. If NO period for reply is period advised to the less than the period of the communication. If NO period for reply is period to the communication. If NO period for reply is period to the communication. If NO period for reply is period to consideration in period the communication. If NO period for reply is period to the communication of the mainty of the period to the mainty of the period to the period			Application No.	Applicant(s)					
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DETAILED ACTION

Page 2

Status of Claims

Claims 20-23 are currently pending.

The rejection of claims 20 and new claims 21-23 under 35 U.S.C. 103(a) as being unpatentable over WO 97/28169, is maintained for the reasons set forth in the office action mailed 3/11/05.

Claims 1-19 have been cancelled.

Election/Restrictions

Election was made **without** traverse in the reply filed on 3/11/05 to group two, claim 20 and new claims 21-23.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 20 and new claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/28169.

The reference teaches disodium salt of fosfluconazole. (page 10, example 2)

The reference does not teach the instant invention with sufficient specificity to constitute anticipation. The reference fails to teach the specific hydrate.

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The reference does teach the disodium salt of fosfluconazole, therefore there would be a reasonable expectation of success to modify the prior art to arrive at the instantly claimed invention because the prior art teaches disodium salt of fosfluconazole, which one of ordinary skill in the art would reasonably expect to form the instantly claimed hydrates when put in water. Furthermore, the reference teaches that the compounds have good aqueous stability; therefore it is clear that they are usable with an aqueous material. The reference discloses the claimed invention except for the exact water content of the disodium salt of fosfluconazole. An aqueous composition would encompass 11-20% water. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use an aqueous composition with the instantly claimed antifungal materials, since it has been held that discovering an optimum value of a result effective variable involves only routing skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CPA 1980). The applicant argues that the plurality of hydrate forms would not be present, however the applicant does not require that all forms be present. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to create the instantly claimed hydrates from a disodium salt of fosfluconazole.

In view of the forgoing, the above claims have failed to be patently distinguishable over prior art.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See US 5,872,111 (Au et al.), specifically example 31 and column 29.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derrick G. Hamlin whose telephone number is (571) 272-1317. The examiner can normally be reached on Monday-Fridays from ~8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Yogendra Gupta, can be reached on (571) 272-1316. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Derrick G. Hamlin

5/31/05

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